

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-2209

Fernandez v. Gonzales

IMMIGRATION. Whether petitioner qualifies as a "National" under the Immigration and Nationality Act and U.S. v. Morin.

05-5062

US v. Arroyo-Benetiz  
(Voorhees)

CRIMINAL LAW & PROCEDURE. Whether magistrate judge improperly amended indictment, and if so, whether defendant waived objection thereto; whether district court erred in accepting defendant's guilty plea.

06-2052

Wilmington Shipping v. New England Life Ins  
(Howard)

ERISA. Does a participant lose the right to sue for breach of fiduciary duty if the plan becomes insolvent and the Pension Benefit Guaranty Corporation assumes duties as statutory trustee; other issues.

06-1601 (L), 06-1691

TNT Logistics NA Inc v. NLRB

LABOR: Whether substantial evidence supports Board's finding that petitioner failed to bargain with union concerning plant closing; whether remedy ordered is appropriate; other issues.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

MONDAY, MAY 21, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

06-16 (L), 06-17  
Williams v. Ozmint  
(Currie)

06-1552  
Three Lower Counties v. State of MD  
(Davis)

05-1715  
Lendo v. Gonzales

NATURE OF CASE

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

MEDICAID LAW. Does state's supplemental payment methodology comply with federal law; standing; other issues.

IMMIGRATION. Whether this court has jurisdiction over a discretionary denial of a continuance to await LIFE Act relief; other issues.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
9:30 a.m.

TUESDAY, MAY 22, 2007

REVD 5/17/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-7635 (L), 05-7636  
US v. Poindexter  
(Quarles)

HABEAS CORPUS. Whether trial counsel was ineffective for failing to note an appeal when Poindexter waived his appellate rights in plea agreement.

06-4563  
US v. Wallace White  
(Quarles)

SENTENCING. Whether the government provided sufficient documentation of prior convictions for purposes of sentencing as an armed career criminal.

06-1991  
Allstate Insurance v. JAD Coal Company Inc  
(Turk)

CIVIL. Whether district court erred in construing business automobile insurance policy against insured.

06-1916 (L), 06-1990  
Etape v. Chertoff  
(Chasanow)

IMMIGRATION. Whether the filing of a civil complaint in district court pursuant to 8 U.S.C. Section 1447(b) vests exclusive jurisdiction over the naturalization application in the district court.

PANEL II  
COURTROOM TWO  
Courthouse Room 201 (Green Carpet)  
9:30 a.m.

TUESDAY, MAY 22, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1668

Holliday Amusement v. South Carolina  
(Houck)

CONSTITUTIONAL LAW. Whether South Carolina's prohibition of video poker machines constitutes a taking; whether Eleventh Amendment bars unjust compensation claim; whether suit barred by collateral estoppel.

06-1607

Abney v. Coe  
(Tilley)

CIVIL RIGHTS. Whether defendant is entitled to qualified immunity in 42 U.S.C. Section 1983 suit; other issues.

06-1227 (L), 06-2056

Steele Software Sys v. DataQuick Info Sys  
(Mutz)

ARBITRATION. Multiple challenges to arbitration award.

04-2414 (L), 04-2417 04-2418 04-2420

Sherman v. Westinghouse Savan  
(Floyd)

TITLE VII. Should disparate impact subclasses have been certified based upon lack of promotion and disproportionate exposure to radiation based on job assignment; was expert opinion testimony improperly excluded; was summary judgment appropriate.

PANEL III  
COURTROOM THREE  
Courthouse Room 223 (Tan Carpet)  
9:30 a.m.

TUESDAY, MAY 22, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2418

Newport News Shipbld v. DOWCP

LONGSHORE BENEFITS. Whether benefits claim was barred by third party settlement pursuant to Section 33 of the Longshore and Harbor Workers Compensation Act.

06-1569

Alford v. Cumberland Cnty NC  
(Flanagan)

CIVIL PROCEDURE. Whether there was a genuine issue of material fact as to whether the victim posed a threat of serious harm.

06-1924

HCI Technologies v. Avaya, Incorporated  
(Ellis)

CONTRACT LAW. Whether district court erred in denying motion for preliminary injunction; whether agreement excluded injunctive relief from mandatory arbitration clause; other issues.

06-1913

Marfork Coal Company v. Roger L. Weis

BLACK LUNG BENEFITS. Whether ALJ properly excluded employer's evidence regarding date of onset of complicated pneumoconiosis and found employer to be the responsible operator for payment of benefits.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
9:30 a.m.

TUESDAY, MAY 22, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1627

Iron Workers Local v. Hilb Rogal & Hobbs  
(Lee)

SECURITIES LAW. Whether complaint in private securities fraud litigation adequately alleged scienter; whether leave to amend complaint should have been granted; whether specific statements pled by plaintiff were false or misleading.

06-1739

McCaskill v. Yankalunas  
(Garbis)

CIVIL RIGHTS. Whether defendant law enforcement officials are entitled to qualified immunity regarding claim of excessive force.

06-1802

Morehead v. Fewkes Management  
(Howard)

CONTRACT LAW. Whether viatical contract is invalid due to company's violations of North Carolina Viatical Settlement Act.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

TUESDAY, MAY 22, 2007

REVD 5/11/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

06-1009  
Goodman v. Praxair Inc  
(Garbis)

NATURE OF CASE

Rehearing En Banc.

WEDNESDAY, MAY 23, 2007

COURTROOM TWO  
Courthouse Room 201 (Green Carpet)  
9:00 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

06-2022 (L), 06-2054  
Ward v. Dixie National Life  
(Anderson)

06-1175 (L), 06-1857  
Thomas v. Shatz  
(Stamp)

06-2158  
Mora v. City of Gaithersburg  
(Messitte)

NATURE OF CASE

INSURANCE. Meaning of "actual charges" as used in  
defendant's policy; class certification issues.

CIVIL CONTEMPT. Whether the district court properly  
censured attorneys and imposed attorneys fees against them  
for copying notes left in jury room.

CIVIL RIGHTS. Did the defendants violate plaintiff's due  
process rights in refusing to return his confiscated  
firearms and ammunition; other issues.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
Beginning at conclusion  
of en banc rehearing

WEDNESDAY, MAY 23, 2007



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4757

US v. Terrance L. Battle  
(Faber)

CRIMINAL LAW & PROCEDURE. Whether district court accepted guilty plea prior to defendant's attempt to withdraw plea.

06-7565

US v. Mooney  
(Chambers)

HABEAS CORPUS. Whether counsel provided ineffective assistance by failing to advise the defendant of the potential availability of a justification defense.

06-1151

City Natl Bank v. USDA  
(Chambers)

CIVIL PROCEDURE. Whether doctrine of derivative jurisdiction should be judicially abrogated or modified in case removed pursuant to 28 U.S.C. Section 1442; other issues.

PANEL II  
COURTROOM TWO  
Courthouse Room 201 (Green Carpet)  
Beginning at conclusion  
of en banc rehearing

WEDNESDAY, MAY 23, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

06-1868  
Liberty Commons v. Leavitt

NATURE OF CASE

HHS REGULATORY ACTION. Whether HHS regulation relating to immediate jeopardy of likely serious injury to resident of nursing facility was properly interpreted and applied.

PANEL III  
COURTROOM THREE  
Courthouse Room 223 (Tan Carpet)  
Beginning at conclusion  
of en banc rehearing

WEDNESDAY, MAY 23, 2007

REVD 5/11/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

05-5166  
US v. Rajul Ruhbayan  
(Smith)

06-1481  
Reed v. Buckeye Fire  
(Voorhees)

NATURE OF CASE

SENTENCING GUIDELINES. Upward departure to life sentence;  
other issues.

CIVIL. Propriety of grant of summary judgment on Family and  
Medical Leave Act claim; other issues.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
Beginning at conclusion  
of en banc rehearing

WEDNESDAY, MAY 23, 2007

REVD 4/20/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1646

Whitten v. Hartford Life Grp  
(Cacheris)

ERISA. Numerous challenges to finding that claimant is not totally disabled to perform any occupation.

06-1654

Van Der Linde Hous v. Rivanna Solid Waste  
(Moon)

EQUAL PROTECTION. Whether district court properly applied rational basis to find no equal protection violation; other issues.

06-1854

First Centrum Corp v. Landmark Amer Ins  
(Hudson)

INSURANCE. Whether there is complete diversity of citizenship to support federal jurisdiction; various issues related to interpretation of insurance contract.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
Beginning at conclusion  
of en banc rehearing

WEDNESDAY, MAY 23, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1608

Chicago Title v. Fisher  
(Howard)

FRAUD. Whether genuine issue of material fact exists regarding defendant's liability for fraud and unfair trade practices; issue regarding scope of intracorporate immunity.

06-2024

Coleman v. Talbot Cnty Detentio  
(Legg)

TITLE VII. Whether doctrine of equitable tolling applies where EEOC purported to reissue notice of right to sue; other issues.

06-2028 (L), 06-2075

Western Insulation v. Moore  
(Spencer)

CONTRACT LAW. Issues relating to non-compete clauses negotiated pursuant to sale of business, measure of damages, and issuance of injunctive relief.

05-2112 (L), 06-1799

Tunnell v. Ford Motor Company  
(Moon)

PRODUCTS LIABILITY. Whether district court erred in determining plaintiff's burden of proof and in determining effect of withheld documents, and did it abuse its discretion in striking portion of expert witness testimony; other issues.

PANEL I

COURTROOM ONE

Courthouse Room 412 (Red Carpet)

\*\* 9:00 a.m. \*\*

THURSDAY, MAY 24, 2007

REVD 5/23/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

05-2300 (L), 06-1860  
Korangy v. FDA

06-1263 (L), 06-1321  
Carolina Trucks v. Volvo Trucks  
(Perry)

06-1829  
Martin v. Stewart  
(Norton)

NATURE OF CASE

ADMINISTRATIVE LAW. Did the Food and Drug Administration exceed its statutory authority in imposing sanctions against mammography facility; were the fines imposed excessive; other issues.

DEALERS ACT. Did the evidence meet the requirements of the South Carolina Dealers Act regarding award of compensatory and punitive damages; was there a contractual waiver of damages; other issues.

CONSTITUTIONAL LAW. Do Burford abstention principles bar this suit that alleges S. C. forfeiture laws regarding games of chance are void for vagueness.

PANEL II  
COURTROOM TWO  
Courthouse Room 201 (Green Carpet)  
9:30 a.m.

THURSDAY, MAY 24, 2007

REVD 5/17/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1728

Dur v. Western Branch  
(Lee)

CIVIL. Propriety of summary judgment in favor of  
subcontractor in civil action for damage to boat.

06-1587

Martek Biosciences v. Zucarro  
(Davis)

CONTRACT LAW. Whether the district court properly  
interpreted an earn out provision in merger agreement  
between biotechnology companies.

06-1128

Garrow v. Economos Properties  
(Kelley)

TITLE VII. Proper standard for prima facie case of gender  
discrimination during a reduction in force; whether  
circumstances giving rise to an inference of discrimination  
existed.

PANEL III  
COURTROOM THREE  
Courthouse Room 223 (Tan Carpet)  
9:30 a.m.

THURSDAY, MAY 24, 2007

REVD 5/17/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

05-2201 (L), 06-1043  
Choice Hotels Intl v. Shiv Hospitality LLC  
(Garbis)

06-1523  
Henry v. Purnell  
(Motz)

06-1615  
Bartlett v. Frederick Cnty MD  
(Nickerson)

06-1563  
OneBeacon v. Metro Ready-Mix Inc  
(Davis)

NATURE OF CASE

ARBITRATION. Whether amount in controversy requirement is satisfied in action to confirm arbitration award; whether objections to award are time-barred; other issues.

CIVIL RIGHTS. Whether defendant is entitled to qualified immunity regarding claim of gross negligence or reckless conduct in shooting.

CONTRACT. Whether county breached terms of easement contract; whether negligent misrepresentation claims and constitutional claims should have been dismissed.

INSURANCE. Whether coverage existed under CGL policy; whether doctrine of estoppel may expand coverage under Maryland law.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
9:30 a.m.

THURSDAY, MAY 24, 2007



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1570

Doe v. Kidd  
(Seymour)

CIVIL. Whether district court erred in dismissing  
appellant's claim for long term Medicaid services; other  
issues.

06-1405

Mercantile Peninsula v. French  
(Bennett)

BANKRUPTCY. Whether the bankruptcy court erred in denying  
debtor a discharge in bankruptcy.

06-1069

Colgan Air Inc v. Raytheon Aircraft Co  
(Ellis)

PRODUCTS LIABILITY. Whether limited warranty applied to  
aircraft's maintenance manual; whether breach of express  
warranty can be based upon representation in manual;  
whether strict liability claim can be stated; other issues.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

THURSDAY, MAY 24, 2007

REVD 5/11/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4712  
US v. Intisar Khalif Farah  
(Wexler)

CRIMINAL. Propriety of indictment for unlawful procurement  
of naturalization; evidentiary issues.

06-4700  
US v. Christina Graham  
(Cacheris)

CRIMINAL LAW & PROCEDURE. Whether court erred in permitting  
government to reopen its case; whether retrial violated  
Double Jeopardy Clause.

06-4854  
US v. Ryan D. Jennings  
(Ellis)

CRIMINAL LAW & PROCEDURE. Whether government must prove  
defendant's knowledge that victim was under 16 beyond a  
reasonable doubt as element of abusive sexual contact  
conviction; other issues.

PANEL I  
COURTROOM ONE  
Courthouse Room 412 (Red Carpet)  
8:30 a.m.

FRIDAY, MAY 25, 2007

REVD 4/4/07

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-5195

US v. Josiah C. McManus  
(Thornburg)

SENTENCING. Did the district court err in its application of the Sentencing Guidelines to this Assimilative Crimes Act case.

06-4078

US v. Robert Johnson  
(Howard)

SENTENCING. Whether significant downward variance from advisory guideline range is procedurally and substantively reasonable where court imposed sentence based upon factors discouraged as grounds for departure under the guidelines.

06-4232 (L), 06-4233 06-4234

US v. Nakie Harris  
(Motz)

CRIMINAL LAW & PROCEDURE. Whether district court erred in allowing government to reopen case; whether defense should have been permitted to put on rebuttal testimony; other issues.

05-1133

Cunningham v. Johnson  
(Hilton)

DEFAULT JUDGEMENT. Whether district court abused its discretion in denying the motion to vacate the default judgement; other issues.

PANEL II  
COURTROOM TWO  
Courthouse Room 201 (Green Carpet)  
8:30 a.m.

FRIDAY, MAY 25, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(05/21/2007 - 05/25/2007 Session)

NUMBER AND STYLE

05-5238  
US v. Rodney Saunders  
(Quarles)

06-4747  
US v. Jamal LaRonne Ray  
(Chambers)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether in-court and out-of-court identifications should have been suppressed; propriety of jury verdict form; sufficiency of the evidence.

CRIMINAL LAW & PROCEDURE. Whether warrant application demonstrated probable cause for search of home to obtain evidence of crime that occurred two months earlier.

PANEL III  
COURTROOM THREE  
Courthouse Room 223 (Tan Carpet)  
8:30 a.m.

FRIDAY, MAY 25, 2007

REVD 5/17/07